

January 6, 1759.

CASE

OF

JAMES Earl of MORTON, *Defender,*

AGAINST

Alexander Earl of Galloway, and others, Proprietors
of Lands in the Islands of *Orkney*, Pursuers.

THE great Length of the Papers, which have been printed in this Cause, gave rise to an Order of Court, that the Proofs and Arguments, founded on by each Party, should be collected within a narrower Compass, and stated in the Form of Cases.

The present Process is brought, in order to have it declared, that the Weight of a *Mark*, which is the lowest Denomination in *Orkney*, ought to amount to no more than eight Ounces, and that the other higher Weights, which are all of them Multiples of the *Mark*, ought to be reduced in the same Proportion; by which Means, the present Weights known in these Islands, would be diminished to Two-fifths of what they are at present, and the Quantities of Rent payable to the Defender, by the Vassals and Tenants there, would of course be diminished Three-fifths of what is at present payable.

In order to support this extraordinary Demand, the Pursuers in their Libel set forth, That the Weights, and weighing Instruments in *Orkney*, were derived from *Norway*, and were antiently the same there, with the present *Norwegian* Weights: That they suffered the first Increase, under *Robert* Earl of *Orkney*, about the Year 1584, being then raised a complete Fourth-part, the *Lispund*, or 24 Marks, being increased from 12 Pound to 15 Pound, and the other Weights in Proportion: That under *Patrick* Earl of *Orkney*, they suffered a new Increase of one Fifth-part more, the *Lispund* being raised from 15 Pound to 18 Pound: That from the 1707, under the late Earl

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of

of *Morton*, the Weights have lost their Proportion, and grown out of Shape, to the great Oppression of the Pursuers.

The Conclusions of the Pursuers Summons are, 1st, That the Weights, and Instruments of Weight, to be used in these Islands, should be fixed and regulated to a known Standard, so to remain in all Time coming. 2^{dly}, That the said fixed Standard should be the Standard-weights presently used in the Kingdom of *Norway*, according to a Table referred to. 3^{dly}, That the *Malt-pundar* Weights, are in Weight and Quantity, One-third more than the *Bear-pundar* Weights. 4^{thly}, That it should be declared, that the Pursuers ought to pay their Crown-rents, and other Duties, to the Defender, according to the foresaid Standard-weight, and no otherways.

The Defender has no Interest to oppose any of the Conclusions of the Pursuers Libel, unless in so far as they tend to diminish the Quantity of Rent payable to him; for he is equally desirous with the Pursuers, that the Weights be regulated according to a fixed Standard.

By Means of the Papers, which have been given in on either Side, this Cause, however bulky in Appearance, seems now to be reduced to a very short Issue; for the Pursuers, in their Memorial and Answers, have over and over acknowledged, that the Weights were the same at the Beginning of the present Century, till about the Years 1710 or 1712, as they were about the Beginning of the preceeding Century, viz. about the 1604, or the 1606: That the *Lispund*, at both these Periods, amounted to 18 Pounds, from whence it follows, that the *Lispund* must have increased to the present Weight, of about 30 Pounds, since the 1712.

The only Question which seems, therefore, to be now the Subject of Debate is, how far the Pursuers have proved, that any Increase has happened within this last Period; for with regard to the Question, whether any Increase happened under *Robert* and *Patrick* Earls of *Orkney*, 180 Years ago, the Defender apprehends, that if the Fact could be made out never so clearly, yet it could have no Effect in the present Process, since the Defender's Rents must continue to be paid, in time to come, to as great an Extent as was paid, without Objection, from the 1600 downwards. The Possession for so long a Tract of Time, would be sufficient to establish any Quantity of Rent, as has been often found, with regard to the Measures used at Mills, &c. and therefore the Defender does apprehend, that your Lordships, will confine the Debate to this precise

aise Point, Whether or not the Weights used in these Islands, have been increased since the 1710 or 1712.

The Defender shall therefore state the Evidence on both Sides, with regard to the alledged Increase within this Period, and shall afterwards add, as a Matter of Antiquity, rather than as necessary in the present Issue, the Proofs which relate to the alledged Increase under *Robert* and *Patrick* Earls of *Orkney*.

The Proofs upon which the Pursuers seem to rely, with respect to an Increase, since the 1710, may be reduced to the following Heads:

1st, That from the 1712, or 1715, eight *Lispunds* were computed to the Barrel, in place of 10, which was the Number reckoned for a Century before, and that at present it requires only about six *Lispunds* to fill a Barrel.

2^d, That a *Meil* of Grain measured out less before the 1712, than it does at present, in a Proportion corresponding to the said Increase upon the *Lispund* of Butter, although the Quality of *Orkney* Grain has in later Times been improved.

3^d, That the Medium-price of a *Meil* of Grain is higher now than it was before the 1700, although the Price of Grain in general has decreased within that Time: And that this Increase of the Price corresponds to the alledged Increase of the Weights.

4th, That the Marks of repeated Adjustments upon the *Pundars* and *Bysmars*, presently used in the Country, of which a great Number are produced, are so many Proofs of an Increase of the Weights.

5th, That a great Number of Witnesses have deponed, That there has been an universal and yearly Complaint of the Increase of Weights ever since the 1712.

6th, That the *Iron Steel-yard* produced, and the Declaration said to have been made by *Thomas Aitken* to the Meeting 1743; and the Act of the Justices of Peace 1710, all tend to confirm the Truth of the Pursuers Alledgeance.

7th, And, *Lastly*, That this Increase was easily accomplished, because, during this Period, the *Pundars* and *Bysmars* used in Lord *Morton's* Store-house, were substituted in place of the ancient Standard of the Weights, and the other Weights in the Country were from time to time called in, and adjusted according to the Increase made upon these.

With regard to the first Argument, founded upon the Change which happened about the Year 1715, of allowing in the Chamberlain's

Answer to the
Pursuers first
Proof.

berlain's Accounts, eight *Lispunds* only for every Barrel, in place of 10, and the Alledgeance, that now six *Lispunds* are nearly sufficient to fill a Barrel. The Defender answers, That the Method of accounting with the Chamberlains, at so many *Lispunds per* Barrel, was merely conjectural, and was not regulated by the precise Quantity which a Barrel could hold, but a Surplus was allowed to the Chamberlain for every Barrel, in consideration of his Trouble in collecting and packing the Butter; and the same conjectural Method of accounting continues to this Day, the Defender's Factor being still allowed eight *Lispunds* to each Barrel, though it is very certain, that a less Quantity is sufficient to fill it.

State, p. 253,
E.

State, p. 255,
G, and 258,
F.

But the Pursuers are under a Mistake, when they pretend, that six *Lispunds* are at present sufficient to fill a Barrel. The contrary is proved by the Oath of *Harry Nisbet*, who depones, "That seven *Lispunds* of firm Butter generally go to pack a Barrel, sometimes less; that of thin Butter, it may take seven and a half *Lispunds*, and sometimes more;" and by the Oaths of *Thomas Liney* and *James Grimbister*, who swear, That a Barrel at present contains 200 Pound, and a Half-barrel 100 Pound; and this may be farther ascertained by Experiment. The Pursuers allow, that the least Barrel at present is 60 *Scots* Pints; and, in fact, most of them can contain some Pints more. A Pint of Butter, properly packed, weighs three Pounds, eight Ounces and eleven Drops; so that a Barrel of the least Dimensions will, when properly packed, contain above 212 Pounds, which is equal to seven *Lispunds*, of 30 Pounds each, and two Pounds more; some of the Pursuers Witnesses indeed have said, that by Experiments tried by them, a Pint of Butter weighs only three Pounds; but those Experiments must have been improperly made.

Pursuers Mem.
p. 86.

The Pursuers next Argument, founded upon the Measure of a *Meil* of Grain, preceeding the 1712, compared to its Measure now, will be found, upon Examination, to turn out a direct Proof against them.

The Pursuers say, upon this Point, That about the Beginning of the present Century, a *Last* of *Orkney* Bear was considered as equivalent to a Chalder; and that therefore, a *Meil* was then equal only to Two-thirds of a Boll; but that at present, a *Meil* is equal to a whole Boll.

Answer to the
Pursuers second
Proof.

In Answer to this, the Defender has produced a State taken from the Chamberlains Accounts of *Orkney*, for Crops 1702, 1703, 1704, 1705, of the Measure at *Leith*, of the several Quantities of *Orkney* Bear, sent there during that Period, by which it appears, that 36 *Bear-pundar Meils*, which is equal to 24 *Meils* or a *Last*, *Malt-pundar*

pundar Weight, generally measured out at *Leith*, 20 Bolls; and this appears to have been the Case at the very Time, when, by the Accounts produced upon the Part of the Pursuers, a *Last* and a Chalder were considered as convertible Terms.

This Produce of a *Last* of Bear in Measure, as proved in the 1702, and subsequent Years, exactly corresponds to what is proved to be the present usual Measure of a *Last*. *Patrick Traill* depones, "That in the Year 1753, he and his Partners shipped a Cargo of State, p. 251.
 " Bear from *Orkney* to *Dunbar*, and that each Chalder of 36 *Bear-*
 " *pundar* Meils, measured at *Dunbar* 19 Bolls and a half; that an-
 " other Cargo, sent by them the same Year, measured out 18 Bolls
 " to each *Last* or Chalder, and some of it from 19 to 20 Bolls, and
 " a small Part above 20 Bolls *per Last* or Chalder; and that the
 " common Run of the Measure of the Grain he has been in use to
 " send to *Leith*, was 20 Bolls to each *Last* or Chalder." And with State, p. 252.
 him concurs *James Blaw* his Partner; so that the Argument, which the Pursuers have attempted to draw, from comparing the Measure of an *Orkney Meil* at different Periods, turns out as a decisive Argument against the alledged Increase of the Weights.

It is easy to perceive why an *Orkney Last*, though measuring 20 Bolls, has got the Name of a Chalder, which Expression, in other Parts of *Scotland*, is understood to denominate 16 Bolls only: The *Orkney* Bear is at present, and always has been, of a worse Quality, than what is produced in other Counties; and, as the Method of weighing Grain, in place of measuring it, has always been practised in *Orkney*, it was natural for them to compare their Grain with that of other Counties, according to the Weight of each: But 16 Bolls of good Barley will weigh from 256 to 300 Stone, so that the Medium may be reckoned about 270 Stone, and the Weight of an *Orkney Last* amounts exactly to 270 Stone, each *Meil* weighing 11 and a Quarter Stone, and each *Lispund* 30 Pound; so that a Chalder of the Grain of other Counties was, in this Manner, equal to an *Orkney Last*.

The Argument, which the Pursuers would draw from comparing the Price of a *Meil* of Grain, before the 1712, with its present Price, turns out also to be a very convincing Proof, that there has been no Increase of the Weights. Answers to the Pursuers
3d Proof.

The Defender has subjoined a State of the *Orkney* Prices of Meal and Malt from the 1702 for nine Years, taken from the Chamberlain's Books, and of the Fiars of *Mid-Lothian*, Barley and Meal, for the same Years. The Prices about the Beginning of the present

Century, were, at a Medium, low, occasioned by a Succession of plentiful Crops, after a general Scarcity, but your Lordships will perceive, by comparing this Table with a similar Table of nine Years, preceeding 1756, that the increased Prices in *Orkney* correspond, at both Periods, with the *Fiars* of *Mid-Lothian*. The Increase in the medium Price for nine Years preceeding 1756, is higher than the Medium for nine Years preceeding 1710, but the Increase in *Orkney* and *Mid-Lothian* corresponds: This could not have happened, if the Weights had been increased, as the Pursuers suppose. The Pursuers have printed a Table of the Prices of *Fife*, said to be taken from the Chamberlains Accounts, for a considerable Number of Years, in order to show, that Prices now, are lower than about the Beginning of the former Century, which, if true, would not affect this Argument; and besides, that Table can prove nothing, with regard to the real Prices, either during the last Century or the present, because the *Exchequer Fiars* are well known to be struck greatly below the County Prices.

Answers to
the Pursuers
3d Proof.

Add. Mem.
P. 17-26.

The Pursuers next Argument, derived from the Marks, which are observable upon the *Pundars* and *Bysmars*, produced, is altogether inconclusive. It has been fully proved in the Defender's Additional Memorial, that publick Officers were, from time to time, appointed by the landed Interest of *Orkney*, for making and adjusting the weighing Instruments, and that it was a general and frequent Practice, to order the whole weighing Instruments, to be brought in to the Assayer, in order to be examined, how far they had deviated from their original Construction; and, upon such Occasions they were either found to stand in need of Adjustment, or, at least, the Assayer, in order to be intitled to a Hire, pretended, that they required it, and therefore left upon them the usual Marks of a new Adjustment. But this is very far from proving an Increase of the Weights: The Assayer, who was named by the Country, could have no Interest to create such a general Increase; and, by attempting it, he risked, if discovered, the Loss of his Office, and the most exemplary Punishment. Besides, from the Nature of the Instrument, *Pundars* are extremely liable not only to accidental, but to fraudulent Alterations by the Possessors, which required a perpetual Check. It is almost impossible for the Possessor of a Balance to alter it, without being exposed to an immediate Discovery, because he must show the Persons, who deal with him, upon every Occasion, that the Scales are equally poised, and the Weights used are generally of such a Kind that they cannot be easily diminished, without a Discovery, and afford a Check upon each other: But the Possessor of a *Pundar* can imperceptibly diminish

nish its Weights without Suspicion, by diminishing the Weight of the long Arm, or adding to the Weight of the short Arm, or by taking somewhat from the Weight of that brittle Free-stone, of which the Plummets of the *Pundar* is usually made.

These Circumstances sufficiently account for the Marks of Adjustment upon the *Pundars* produced, and every Degree of Suspicion, that this was done to increase the general Weights must fly off, when it is considered, that all these *Pundars* correspond, with considerable Accuracy, to the Standards now in Court, which are proved to have been regularly handed down, from one Assayer to another, and, by the Oath of *Thomas Aitken*, are proved to have been regularly made use of, in all Adjustments, by himself and by his two Predecessors, *William Tait* and *Thomas Foubister*. *William Tait*, it is proved, was common Adjuster, as far back as the 1710, from which time, the Increase of the *Lispund*, from 18 to about 30 Pounds, is said to have happened, and *Thomas Aitken*, who is aged 60, depones, that he served him a Year, and saw him adjust *Pundars* and *Bysmars* by the same Standards now used. If these Standards had been changed, it is hardly possible, that the Crime could have been concealed, since the Increase of the Weights to so considerable a Degree, as is pretended, must have been immediately perceptible to almost every Person in the Country.

Add. Mem.
p. 26—28.
State, p. 226
and 227.

The Pursuers have boasted very much of the Proof they have brought of an universal and yearly Complaint of the Increase of the Weights ever since 1712. But, in stating this Part of the Evidence, they have trusted more to the Authority of a crowded Margin, than to Quotations from the Oaths of the Witnesses. That this however may not avail them, the Defender will beg leave to examine those References, upon which they build.

Their first Witness is *George Traill* of *Hobister*, with regard to whom, the Defender begs leave to refer to what is stated in the Additional Memorial, p. 43, and p. 51, from which it will appear, what sort of Credit his strong Averments deserve. The Defender shall only add, that there arises, even from the Oath of this very Witness, almost a demonstrative Proof against the alledged Increase. *Hary Nisbet*, above referred to, depones, “ That, at present, a Barrel contains seven *Lispunds* of Firm-butter, and sometimes less; and that of thin Butter it takes seven and a Half *Lispunds*, and sometimes more.” And he adds, “ That somewhat also depends upon the *Bysmar*, upon which the Butter is weighed, as it is more or less accurate.” And of the Truth of this Witness’s Oath, as to the present Contents of a Barrel, your Lordships may be

Answer to
the Pursuer’s
5th Proof.

State, p. 253,
E.

be satisfied by Experiment upon a 60 Pint Barrel, which is allowed to be the least present Size. When this is compared with the Oath of *George Traill*, making some Allowance for his acknowledged Interest in the Cause, the Contents of a Barrel, in the Year 1712, and during all his Factory, which ended in 1725, will be found to correspond, as near as may be, with its present Contents, depones, "That the whole Time of his Chamberlainry, State, p. 193, G. "when the Butter was delivered in whole *Lispunds* and *Marks*, the "Barrel took eight *Lispunds*, and the Half-barrel four *Lispunds* to "fill it up; but if the Butter was of a better Quality than ordi- "nary, and delivered in whole *Lispunds*, the Barrel would then "receive only seven *Lispunds* and a Half, and the Half-barrel "in Proportion." And thus he contradicts his general Averment, State 146, D, That there was no Overcome of the North Isles Butter, and agrees with the Oath of *Hary Nisbet* as to the Contents of a Barrel.

State, p. 195, A. This Witness further depones, "That, first when he was appointed Chamberlain, he heard the *Orkney Meil*, upon the *Malt-pundar*, sometimes computed to weigh, upon Beam and Scale, or "Baulk and Broad, 10 Stone and a Half *Amsterdam*, and thereafter "11 Stone *Amsterdam*, and sometimes 11 Stone and a Half *Amsterdam*; and that four Years ago, he was told by his Merchant, "that the Victual then delivered, did then weigh at the Rate of "11 Stone and a Half upon the *Malt-pundar*, but did never make "any Proof thereof himself." This agrees exactly with the present Medium-weight of a *Meil*, reckoning the *Lispund* at 30 Pounds Weight, for a *Meil* consisting of six *Lispunds*, at 30 Pounds each, amounts exactly to 11 Stone and a Quarter. The Pursuers themselves acknowledge, p. 47 of their Memorial, "That the Sum of "what the whole Witnesses say upon this, is, that as far back as "they had observed, or remembered to have heard, the least "Weight of a *Meil* was 10 Stones and a Half, and the greatest "Weight 12 Stones, which makes the mean Quantity 11 Stone "and a Quarter, *Amsterdam* Weight." And thus your Lordships see, that the Witnesses, deponing to the present Weight of a *Meil*, agree exactly with what *Hobister*, a most interested Witness for the Pursuers, depones, he heard and understood, was the Weight of it in the Year 1712, when his Factory commenced.

Purs. Mem.
P. 47.

The Pursuers have exercised very great Ingenuity, in order to destroy the Force of this Proof: They maintain, that a Stone, *Amsterdam* Weight, consists of no more than eight Pounds, and that therefore

therefore the Witnesses who have deponed as to the present Weight of *Meil*, that it is 11 Stone and a Quarter, *Amsterdam* Weight, meant and understood a Stone of eight Pounds. The Defender believes, that no Person in *Scotland* ever understood a Stone, *Amsterdam* Weight in this Sense: And the Question is not what may be understood by an *Amsterdam* Stone, in *Holland*, or by Writers on the Subject there, but what a *Scotsman*, or any Dealer in *Edinburgh*, or in *Orkney*, means, when he talks of a Stone *Amsterdam* Weight. A Stone of 16 Pounds is denominated *Amsterdam* Weight in this Country, not because it is the same with the *Amsterdam* Stone, but because it consists of 16 *Amsterdam* Pounds, in Opposition to Pounds and Stones *English* Weight.— The Pursuers Objection is so apparently a Quibble, that it hardly deserves a serious Answer.

From this View of *Hobister's* Evidence, your Lordships will judge whether it can avail the Pursuers greatly, in support of their alledged Increase of the Weights since the 1712.

The next Witness is *William Spence*, who depones, “ That from State, p. 95,
 “ the Year 1717, to the Year 1722, (during which Time he re- D.
 “ ceived the Victual, as Apprentice and Clerk to *Hobister*) there
 “ was an yearly Outcry against the *Pundars*, in regard of their In-
 “ crease, and that the old *Pundars*, which the People in the diffe-
 “ rent Islands called the *King's Pundars*, having been taken away,
 “ and new *Pundars* brought in place of them, these new *Pundars*
 “ were complained of, as being heavier than the old.” But this
 Witness does himself explain the Foundation of the Outcry; for he
 depones, “ That *Hobister* changed the former Custom, of leaving State, p. 102,
 “ a *King's Pundar* in the several Islands for receiving the Superior- C, D.
 “ duty, and that he carried off and removed these *King's Pundars*,
 “ and brought other *Pundars* in their place, which he generally
 “ brought back again to *Kirkwall*.” What *Hobister's* View might be
 in doing so, is pretty apparent. And as a Consequence of this, *Spence* Ibid. p. 100,
 depones to a Quarrel which happened between *Hobister* and *Fea* B.
 of *Kirbister*, about the Year 1721 or 1722, when *Kirbister* com-
 plained, that *Hobister* had taken from him 12 Marks on every
 Weight more than he ought, by using a greater *Pundar*, and that
 the other People in that Island, in like Manner, complained against
Hobister for his taking too great Weight, and said, that they were
 sure his *Pundar* was too heavy, in as far as it did not agree with
Kirbister's Pundar, which, they said, exactly agreed with the *King's*
Pundar. The Consequence of this Dispute, he tells us, was, that
 C. *Hobister*,

Hobister, in effect, acknowledged the Fact charged upon him, and gave *Kirbister* a Deduction of 12 Marks on every Weight, but that the rest of the Island got no Allowance from *Hobister*.

Upon this State of the Evidence, it is submitted to your Lordships, whether this Gentleman, *Hobister*, who, during his Factory, amassed an almost incredible Fortune from nothing, may not, without Breach of Charity, be supposed to have given Occasion to all those Complaints which *William Spence* refers to, without either increasing the general Weights of the Country, or adding to any one's Revenue but his own.

- State, p. 125, F. The Pursuers next Witness, *John Fea*, depones, " that for these 26
 Ibid. p. 128, D. " or 28 Years last past, he had heard an Outcry against the Weights,
 " on account of their Increase." — *William Skea* depones, " that
 " for 30 Years past, he has heard o'ur meikle an Outcry against
 " the Weights." But both these Witnesses mention the Quarrel,
 which happened between *Hobister* and *Kirbister*, deponed to by
William Spence, which corresponds to the Time they say this Out-
 cry commenced. *Thomas Smith* depones, " that for 30 Years past
 " he has heard a general Complaint against the Weights, upon ac-
 " count of their Bigness and Increase." This Witness, your Lord-
 ships will observe, is aged 78, and as he fixes the Period when
 the Complaints commenced, at the Time when *Hobister* was Factor,
 and removed the *King's Pundars*, and sent new ones, this strongly
 corroborates the Oath of *William Spence*, by which the Use of unjust
 Pundars is pretty clearly fixed upon that Gentleman. — *Thomas Sinclair*
 depones, " that for 30 Years back, till within these few Years
 " last past, he has yearly heard a general Complaint of the In-
 crease of the Weights." *George Rendall* depones, " that about
 " 33 or 34 Years ago, when *Hobister* was Chamberlain, there was
 " no Complaints about the Increase of the Weights, but that the
 " *King's Pundar*, kept in the House of Holland, having got a wrong
 " Cast, *Hobister* caused a new Pundar be brought to the Island of
 " *Westra*, which was complained of as too big, and that ever since,
 " he has heard an Outcry against the Pundars on account of their
 Bigness." *James Smith* does not mention how far back he heard
 the Complaint, and is only aged 42. — *Robert Graham* is aged 29,
 and *Thomas Balfour* is aged 33. *William Sinclair* depones, " that
 " for these 24 Years past, he has heard an Outcry against the In-
 crease of the Weights." *Malcolm Groat* depones, " that he ne-
 ver did hear any Tenant seeking Abatement of his Rent, on ac-
 count

“ count of the Increase of the Weights; and depones, that, to
 “ the best of his Remembrance, it was in the House of *Burray*
 “ that he heard first Mention made of the Increase of the
 “ Weights.” *John Fotheringham*, aged 77, depones, “ that it is ^{State, p. 210,}
 “ above a Dozen of Years, since he first heard a general Complaint ^{E.}
 “ against the Increase of *Pundars* and *Bysmars*.” *James Seaton*, a- ^{Ibid. p. 212,}
 “ ged 63, depones, “ that he never heard of a general Complaint of ^{F.}
 “ the Increase of *Pundars* and *Bysmars* in their Weight over the
 “ whole Country, but that he heard *George Traill* of *Hobister*,
 “ when he was Chamberlain, complained upon for having brought
 “ a heavy *Pundar* to the Island of *Westra*, and has heard several
 “ Complaints against the Chamberlains, and others that succeed- ^{Ibid. p. 197,}
 “ ed *Hobister*, on the same Account since.” *Donald Groat*, aged ^{F.}
 “ 65, depones, “ that about 20 Years ago, and above, as he
 “ thinks, he has heard Complaints made of an Increase of the ^{Ibid. p. 202,}
 “ Weights.”—*Andrew Young* depones, “ that he never heard of a ^{C.}
 “ great Clamour against the Increase of the Weights, till about
 “ two Years before Mr. *Hay*, then Chamberlain of the Earldom,
 “ his leaving the Country; that about the Time Sir *James Stewart*
 “ of *Burray* and Mr. *Hay* disagreed, he heard a greater Clamour
 “ than before about the Increase of the Weights; but he depones,
 “ that from all the Trials he himself made of *Pundars*, since he first
 “ began to weigh, which was in the 1725, he believes them to
 “ be the same now as at first, and that he neither believes nor
 “ suspects any general Increase upon the Weights of the Country
 “ in all that Time.”

Such are the Depositions of the Witnesses to whom the Pursuers
 have referred, p. 93 of their Memorial. It is left with your Lord-
 ships to judge, whether this Proof, upon the whole, amounts to any
 thing more, than that *Hobister* had occasioned several particular
 Complaints by attempting to use *Pundars* of too great Weight, and
 which, when quarreled, he was obliged to acknowledge and give
 up; and that Sir *James Stewart* took hold of these particular Com-
 plaints as a Handle to raise a general Outcry.—The Proof was
 taken in the 1753, and the Quarrel with Sir *James Stewart* hap-
 pened about the 1735, so that those Witnesses, who depone, in ge-
 neral Terms, that they remember to have heard a Complaint 20 or
 30 Years before, may well be understood to refer to the Time of
 of Sir *James Stewart*’s Quarrel, or to the Time when *Hobister* was
 discovered in his Attempt to exact too great Weight.

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The Pursuer's next Argument is derived from the *Iron Steel-yard* now in Court, the Declaration of *Thomas Aitken* in the 1743, and the Act of the Justices in the 1710.

Answer to the
Pursuers 6th
Proof.

The Defender shall not take up your Lordships Time with a long Answer to these Proofs. But, with Regard to the *Iron Steel-yard* and *Thomas Aitken's* Declaration, begs leave to refer to what is stated in the Additional Memorial, p. 46. This *Steel-yard* is in Fact no other than a *Bear-pundar*, and the Stone, which is used as the Plummet for the *Bear-pundar*, does at this Day bring it to an Equilibrium.

With Regard to the Act of the Justices of the Peace 1710, the only Argument which the Pursuers derive from this, is founded upon a Criticism on the Words, the Terms *Common Standard*, and *Country Standard*, being used, to express those Weights which were then in the Adjuster's Hands, and are now in Court. This is surely a very slight Ground, to induce your Lordships to alter the whole Weights of this Country, more especially, as, in other Acts, the same Standard Weights are expressed, sometimes in the Singular, and sometimes in the Plural Number. *Additional Memorial*, p. 20 and 21.

The only remaining Argument as to the Increase of Weight after the 1712, of which the Defender shall take Notice, is the Pursuers Alledgeance, That, during this Period, the *Pundars* and *Bysmars* used in Lord *Morton's* Store-house, were substituted in place of the ancient Standard; and that the other Weights were by that means gradually increased.

Answer to the
Pursuers 7th
Proof.

The Proof of this strong Alledgeance is no other than this, By one of the Country Acts, dated 7th *February* 1628, it was declared, That every *Pundar* should be justed, and made equal with the *King's Pundar*, and that none have *Pundars* or *Bysmars* of greater Weight. —By another of these Acts, dated 6th *August* 1644, it was ordered, That the haill general Acts should be read by each Baillie quarterly. —*Traill* of *Hobister* and *William Spence*, two of the Pursuers Witnesses, depone, That from the 1712 to the 1725, they did regularly cause publish the Country Acts at the Parish Churches, four Times in the Year.

From these Premisses, the Pursuers infer, that all the *Pundars* in the Country were, from time to time, sent in and adjusted, according to the *King's Pundar*, in Lord *Morton's* Store-house.

Your

Your Lordships will easily perceive, that this Proof is extremely inconclusive; and it is, besides, totally overturned, by the Oath of *Thomas Aitken*, who expressly depones, "That his two Predecessors, *Thomas Forbister* and *William Tait*, and the Deponent himself always made Use of the very same Standards, now in Court, for regulating the *Pundars* and *Bysmars* adjusted by them; and that he saw these very Standards, and neither more nor less, with the said *William Tait*." State, p. 226.

The Authenticity of these Standards, and the regular Nomination of Assayers, is fully established by what is stated in the Defender's Additional Memorial, from p. 17 to 28: And, indeed, the Pursuers have now, in their Answers to that Paper, not only departed from their high Declamation upon this Branch of the Argument, but have in Effect given up the Dispute.

The Authenticity of the Standards, and the regular Nomination of Assayers, by the landed Interest, and the Magistrates of *Kirkwall*, is an Argument, which deprives the Pursuers Plea of every Degree of Plausibility, and strongly confirms those Proofs against an Increase since the 1712, above stated, arising from the ancient Price and Measure of a *Meil*, compared with what it yields at present.

The Defender shall only add, upon this Branch of the Argument, as to an Increase after the 1712, that it is contradicted by the Tack-duty, paid by *William Dick* for many Years after the 1629, and by the Tack-duties from 1689 to 1699, which are all much above what could have been paid, if the Weights had been, at that Time, no greater, than the Pursuers pretend; neither could these Revenues have yielded, in the 1707, any thing near the Interest of 30,000 *l.* at $5\frac{1}{2}$ per cent. for which they were mortgaged, and the Feu-duty of 500 *l.* to the Crown, with the Stipend and other Deductions, to which they are subject, if the Pursuers Hypothesis, with Regard to the Weights, had any Foundation.

The Defender apprehends, that what has been stated is entirely decisive of this Cause; the Pursuers have brought no Proof, but what is vague and inconclusive, with Regard to an Increase after the 1712; whereas, the Proofs that there has been no Increase, are positive and direct, and therefore, it seems altogether unnecessary, to examine the Pursuers elaborate Search into Antiquities, with Regard to what may have been the Weight before the 1600; for they admit, that there was no Increase from that Time to the 1712.

The Defender shall, however, for your Lordships Satisfaction, shortly recapitulate the Pursuers Proofs upon this Head, with the contrary Evidence referred to upon his Side.

The Pursuers rely upon three Instances, from the Records of Thirds of Benefices, in which the Accomptant seems to have computed 15 *Lispunds* of Butter as equal to a *Barrel*; and they endeavour to show, that 15 *Lispunds* or *Bysmar-punds*, of present *Norway* Weight, would exactly fill a *Barrel*: From whence they conclude, that at the Time these Accounts of Thirds were made out, the present Weights of *Norway*, were exactly the same Weights, which were then used in *Orkney*; although it is certain, that, at present, the Weights in *Orkney* are full three fifths larger, and have continued so, as the Defender has shewn, ever since the 1600.

The Improbability of this Alledgeance must strike your Lordships at first Sight; and it is further expressly disproved, by another Entry, in the same Record of Thirds, where the Accomptant appears to have reckoned 7 *Lispunds* and three-eighths to the *Barrel*; which answers pretty much to the present Contents of a *Barrel*.

State, p. 68, G. The Pursuers say, that this last Account, *anno* 1561, is erroneous, and that there is, upon the Margin of the Account, a Mark, to show that it is so; but the Defender hopes, your Lordships will, at advising this Cause, appoint the Record to be brought into Court, from Inspection of which it will appear, that though there is upon the Margin of that Account an unintelligible Dash or Blunder, which has possibly been put there in later Times, yet that it requires an extraordinary Stretch of Imagination, to interpret this Blot as any Indication of a Mistake in the Account.

But further, there is produced a Charter, dated in 1584, proceeding upon a Contract in 1568, by which 12 *Lispunds* are computed to the *Barrel*, although this Contract was made at the very Time, when the Accomptant for the Thirds of Benefices, computes 15 *Lispunds* to the *Barrel*.

The Pursuers would have your Lordships believe, that the Computation of 15 *Lispunds* to a *Barrel*, in these Accounts of Thirds, exactly corresponded to the present *Norway* Weights, and if it did so, this would be no Proof, either that the present *Norway* Weights are the same with those anciently used in that Country, or that the Computation of *Lispunds* to a *Barrel*, was regulated at that Time by the precise Quantity which a *Barrel* could hold; when in modern Times,

Times, it is well known, that the Computation is entirely conjectural, and that there is always a greater Number of *Lispunds* allowed, than are sufficient to fill the Barrel.

But unluckily for the Pursuers, the Computation of 15 *Lispunds* to a Barrel, does not even correspond to what the Pursuers give out for the present *Norway* Weights; 15 *Lispunds*, at 12 *libs.* to the *Lispund*, make 180 *libs.* The Pursuers allow, that the least Size of a Barrel is 60 *Scots* Pints, and this they maintain to have been the Size of it in all former Times; but a Barrel of 60 Pints, will, in fact, contain at this Day, 212 *libs.* and the Truth of this can at any Time be proved by Experiment; and therefore, 15 *Lispunds*, at 12 *libs.* for each *Lispund*, never could be sufficient to fill a Barrel at any Time; so that supposing the Weights in 1561 had been the same as the present *Norway* Weights, and that the Accountant had formed his Calculations agreeable to what a Barrel could really hold, he must have stated 17 *Lispunds* and Two-thirds to the Barrel, in place of 15 *Lispunds*; and therefore, the Pursuers Argument does in fact destroy itself.

The Defender has at great Length refuted the Pursuers Argument, derived from the *Norway* Weights, and the vague Computations in the Records of Thirds in their Memorial, p. 29-38, and in the Additional Memorial, p. 49. That there never was any fixed Relation between the *Lispund* and Barrel, is proved by the ancient Rental of these Islands, lying in the Lower Parliament-house, intituled, *Rental. Orchadie pro rege et episcopo*, dated in the 1595, and presented by the Bishop of Orkney to the Exchequer, and lodged with the Clerk Register in the 1612. In various Places of this Rental, there are stated 18, 19, 14, and 12 *Lispunds*, without converting them into Barrels, although at that Time the Pursuers admit, that 10 *Lispunds* were computed to the Barrel.

The Pursuers pretend, that the *Lispund* was, about the Year 1584, increased from 12 to 15 Pounds, for Proof of which, they rely upon a Charter in the 1584, where 12 *Lispunds* are computed to the Barrel; and upon a pretended Relation, which they endeavour to make out at that Time, betwixt the *Meil* and *Scots* Boll, which they say, corresponded to this Increase.

With regard to the Charter 1684, your Lordships will observe, that it proceeded upon a Contract, dated in the 1658, which if it proves any thing, must prove, that the Barrel, at the Date of the Contract, was computed at 12 *Lispunds*, and therefore, that the

Entry

Entry in the Record of Thirds, where 15 are computed, must be erroneous, which destroys the Pursuers whole Hypothesis, of a Correspondence between the Weights of Orkney and Norway at this Time.

Purs. Mem.
p. 70.

With regard to the Relation between the Meil and Scots Boll, at this Time, it is entirely founded upon a Memorandum, in the Rental of the Provostry of Orkney, anno 1584, which the Pursuers have transcribed thus: "Memorandum, 24 Meils Bear upon the Malt-pundar, make ane Last, and ilk Last ~~Malt~~, makes 18 Bolls Scots Measure."

But the Defender must beg leave to differ from the Pursuers as to the reading of this Passage. The Defender does affirm, and appeals to the Paper itself, that the Words are: "Memorandum, 24 Meils Bear upon the Malt-pundar, makes an Last, and ilk Last mettitt makes 18 Bolls Scots Measure." It is evident from the Connexion of the whole Passage, that this is the true Reading; and tho' the Word *mettitt*, about which the Parties differ, is a little defaced, (whether by Time, or other Causes, the Defender shall not say) yet, upon an accurate Inspection, no Doubt will remain, that the Defender has given the Passage as it was really wrote, whereas it is not intelligible as the Pursuers have transcribed it.

Taking the Provost's Memorandum in this Sense, his Computation of 18 Bolls to the Malt-pundar Last, agrees very nearly to what a Last will presently yield, making Allowance for the Difference of Grain of different Crops and Years, and in different Parts of the Country; besides, the Grain produced in Orkney is in Fact worse at present than it was in more ancient Times, owing to a destructive Practice of using the worst and smallest of the Bear for Seed, and of never changing the Seed, or fallowing any Part of their Grounds.

The Pursuers hoped to render their Alledgeance of an Increase of the Weights 200 Years ago probable, by recapitulating the Oppressions, said to have been committed by Robert and Patrick Earls of Orkney; but this Argument also has, upon Examination, turned out against them. In all the Records which the Pursuers have most attentively examined, not a Word is to be found of any Complaint against these Earls for having increased the Weights, tho', if they had done so, to the Degree that is alledged, it is impossible that it should either have been unobserved, or patiently submitted to.

to. And it is not enough to say, that as the Records are not altogether compleat, there may have been Complaints, though none are discovered; or that the Inhabitants were overawed from entering Complaints, because there is found upon Record a great Variety of Complaints against these two Earls, expressed in the strongest Terms; and it is impossible that this most grievous Oppression, could upon these Occasions have been passed over in Silence, if there had been any Pretence to charge them with the Crime.

The Defender has thus endeavoured to give your Lordships a short View of this Cause, and of the principal Arguments, which are founded upon by the Pursuers, to prove that the Weights have been increased, he is persuaded, that the Answers stated upon his Part will appear satisfactory, and that your Lordships will give him such Reparation, for this wanton Attack, which the Pursuers have made, as is proportioned to the Injury and Damage he has suffered. In directing the Debate, he doubts not that your Lordships, for the Ease of the Court, will direct the Pursuers to confine their Argument to the Alledgeance of an Increase after the 1712, without involving the Cause by an Enquiry into what is said to have happened 200 Years ago, which, if it were never so clearly proved, could not possibly affect the Revenues, which have been paid to as high an Extent as at present, ever since the Days of *Patrick Earl of Orkney*. If the Pursuers shall however be permitted to enter into this Disquisition, the Defender has no Apprehension, that they will either be able to satisfy your Lordships, that an Increase happened, at that time, or that it could affect the present Question, if there had.

In respect whereof, &c.

WILLIAM JOHNSTON.

FIRST

And it is not enough to say that as the Records are not at-
together complete, there may have been Complaints, though none
are discovered; or that the Insurgents were ordered from their
ing Complaints, because there is found upon Record a year 7
of Complaints against these two parts, except in the first
of them; and it is impossible that the Insurgents should
not, could upon the Occasion have been paid, even in the
ence, if there had been any Pledge to change them with the
Crown.

The Defendant has thus endeavoured to give the Plaintiff a
most View of this Cause, and of the Proceedings in it, which
are founded upon by the Plaintiff, to prove that the Plaintiff
have been incited, he is persuaded, that the Plaintiff's
on his Part will appear satisfactory, and that your Lordships will
give him such Reparation, for this wanton Attack, which the Pl-
aintiff has made, as is proper. He has also, in this Part
has insisted, in showing the State of the Plaintiff's Cause, to
Lordships, for the sake of the Plaintiff, and of the Plaintiff's
confine their Argument to the Cause by an Inquiry into what is said
1712, without involving the Cause by an Inquiry into what is said
to have happened 200 Years ago, which, it is now too late to
prove, could not possibly affect the Plaintiff's Cause, and which
to as much as Plaintiff's Cause, as Plaintiff's Cause, and which
Part of the Cause. If the Plaintiff's Cause is not to be
into this Disquisition, the Defendant has no objection, that they
will either be able to satisfy your Lordships, that an Inquiry into
peace, at that time, or that it could affect the Plaintiff's Cause, if
there had.



WILLIAM JOHNSON.

FIRST TABLE, shewing the Price of Meal and Malt in Orkney, and Barley and Meal in Mid-Lothian, for nine Years preceeding 1710.

Year	PRICES in ORKNEY, from Lord Morton's Rental-books.						MID-LOTHIAN FIARS.					
	Malt per Meil.			Meal per Mei			Barley.			Meal per Boll of 8 Stone.		
	L.	s.	d.	L.	s.	d.	L.	s.	d.	L.	s.	d.
1702	3	00	00	4	00	00	6	13	4	7	00	00
1703	3	12	00	4	12	00	7	3	4	6	5	00
1704	3	10	00	4	10	00	6	15	00	6	00	00
1705	3	12	00	5	00	00	6	12	00	5	6	8
1706	3	12	00	4	12	00	5	2	00	4	00	00
1707	3	6	8	4	12	00	5	6	8	4	10	00
1708	4	00	00	6	00	00	7	6	8	7	4	00
1709	4	00	00	6	00	00	8	15	00	8	10	8
1710	4	00	00	6	00	00	8	10	00	7	4	00
Divide by 9	32	12	8	45	6	00	62	4	00	56	00	4
Mean Prices	3	9	9 ² / ₉	5	00	8	6	14	10 ⁶ / ₉	6	4	6 ² / ₉

SECOND TABLE, shewing the Price of Meal and Malt in Orkney, and Barley and Meal in Mid-Lothian, for nine Years preceeding 1756.

1740. Meal in Orkney 5 l. per Meil. Barley in Mid-Lothian, 6 l. 15 s. & Meal, 6 l. per Boll.	1747	4	00	00	5	00	00	6	14	00	5	4	00	Barley, 3 s. 4 d. No: Mid-Lothian 1754. but 4 l. 1755. but 6 l.
	1749	4	00	00	5	00	00	6	6	00	6	8	00	
	1750	4	00	00	5	00	00	6	7	00	6	8	00	
	1751	5	10	00	6	10	00	7	4	00	8	4	00	
	1752	4	10	00	6	00	00	7	16	00	8	00	00	
	1753	4	10	00	6	00	00	8	8	00	7	4	00	
	1754	4	10	00	6	00	00	6	5	00	6	00	00	
	1755	6	00	00	7	4	00	6	12	00	7	4	00	
	1756	5	00	00	7	00	00	10	00	00	10	00	00	
Divide by 9	42	00	00	53	14	00	65	12	00	64	12	00		
Mean Prices	4	13	4	5	16	00	7	5	9 ³ / ₉	7	3	6 ² / ₉		
Medium Prices in 1st Table	3	9	6 ² / ₉	5	00	8	6	14	10 ⁶ / ₉	6	4	6 ² / ₉		
Medium Prices in 2d Table	4	13	4	5	16	00	7	5	9 ³ / ₉	7	3	6 ² / ₉		
Difference	1	1	3	9 ⁷ / ₉	0	15	4	0	10	10 ⁶ / ₉	0	19	0 ² / ₉	

TABLE showing the Measure at <i>Leith</i> of the several Quantities of <i>Orkney</i> Bear, sent there, Crops 1702—1705, taken from the Factors Books, of the Hand writing of <i>Traill</i> of <i>Hobister</i> .						Bear shipped in <i>Orkney</i> , at 36 Meils per <i>Orkney</i> Chalder.				Measur'd at <i>Leith</i> in Bolls.	
						Ch.	Mls	set	M	Bolls	F.
Crop 1702	Shipped on board <i>Alexander Haffon</i> for <i>Leith</i>					20	6	4	00	404	00
	Ditto on board <i>David Boag</i>					11	15	4	18	220	00
	Ditto on board <i>Alexander Flet</i>					10	19	4	12	217	00
	Ditto on board <i>George Wood</i>					14	14	5	18	288	00
Crop 1703	shipped on board <i>William Haffon's</i> Vessel for <i>Leith</i>					16	26	1	00	329	00
	Ditto on board <i>Malcolm Macauley</i>					31	8	4	00	634	00
	Ditto on board <i>William Wilson</i>					9	22	00	00	194	00
	Ditto on board <i>William Nuccoll</i>					18	22	1	00	381	00
	Ditto on board <i>Thomas Backie</i>					10	13	3	12	211	00
Crop 1704	Ditto on board <i>William Nuccoll</i>					15	35	1	12	319	00
	Shipped on board <i>James Irvine</i> for <i>Leith</i>					18	22	5	12	380	00
	Ditto on board <i>William Nuccoll</i>					18	6	2	12	368	2
	Ditto on board <i>David Ramsay</i>					16	14	00	00	320	00
	Ditto on board <i>George Boag</i>					12	2	3	12	249	00
	Ditto on board <i>David Ramsay</i>					11	22	2	21	243	00
Crop 1705	Ditto on board <i>William Nuccoll</i>					17	24	4	18	368	00
	Shipped on board <i>William Nuccoll</i> , for <i>Leith</i>					18	15	2	00	372	00
						272	5	3	3	5497	2

Bolls of

9:

8:

— heated

— heated

12

14 1/2

— heated

4 1/2

6 1/2

8:

9:

8 1/2

10 1/2

— heated

— not heated

10. final

90 1/2

Thus 272 Orkney Chalders, 5 Meils, 3 Setteens, and 3 Marks having measured 5497 Bolls at Leith, upon a Medium of the whole Quantities answers to 20 Bolls, and a Fraction over, to the Chalder.

FIRST TABLE

TABLE I									
1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30
31	32	33	34	35	36	37	38	39	40
41	42	43	44	45	46	47	48	49	50
51	52	53	54	55	56	57	58	59	60
61	62	63	64	65	66	67	68	69	70
71	72	73	74	75	76	77	78	79	80
81	82	83	84	85	86	87	88	89	90
91	92	93	94	95	96	97	98	99	100

SECOND TABLE

1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30
31	32	33	34	35	36	37	38	39	40
41	42	43	44	45	46	47	48	49	50
51	52	53	54	55	56	57	58	59	60
61	62	63	64	65	66	67	68	69	70
71	72	73	74	75	76	77	78	79	80
81	82	83	84	85	86	87	88	89	90
91	92	93	94	95	96	97	98	99	100



1	2	3	4	5	6	7	8	9	10
11	12	13	14	15	16	17	18	19	20
21	22	23	24	25	26	27	28	29	30
31	32	33	34	35	36	37	38	39	40
41	42	43	44	45	46	47	48	49	50
51	52	53	54	55	56	57	58	59	60
61	62	63	64	65	66	67	68	69	70
71	72	73	74	75	76	77	78	79	80
81	82	83	84	85	86	87	88	89	90
91	92	93	94	95	96	97	98	99	100